

MINUTES

Payment Methodologies for Medicaid Providers Interim Study

Representative Jean Hunhoff, Chair
Senator Larry Tidemann, Vice Chair



**Fourth and Final Meeting, 2016 Interim
Tuesday October 25, 2016**

**Room 414 – State Capitol
Pierre, SD**

The fourth and final meeting of the Payment Methodologies for Medicaid Providers Interim Study Committee was called to order by Representative Jean Hunhoff, Chair, at 10:00 a.m. (CDT) on October 25, 2016, in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined by the following members answering the roll call: Representative Jean Hunhoff, Chair; Senator Larry Tidemann, Vice Chair; Senators Scott Parsley, Deb Peters, and Bruce Rampelberg; Representatives Spencer Hawley, Leslie Heinemann, Thomas Holmes, and Fred Romkema.

Staff members present included Jason Simmons, Senior Fiscal Analyst; Clare Charlson, Principal Research Analyst; Jessica LaMie, Research Analyst; and Paul Giovanetti, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Approval of the Minutes

SENATOR TIDEMANN MOVED, SECONDED BY SENATOR RAMPENBERG, TO APPROVE THE MINUTES FOR THE MEETING ON SEPTEMBER 27, 2016. The motion prevailed on a voice vote.

Opening Remarks

Representative Jean Hunhoff reviewed the work of the interim committee, the scope of the committee, and the agenda for the meeting.

Fair Labor Standards Act Overtime Rule Implications

Department of Social Services Preliminary Provider Survey Results

Ms. Brenda Tidball-Zeltinger, Deputy Secretary, Department of Social Services, provided an overview of the changes to the Fair Labor Standards Act (FLSA) overtime rule which will become effective December 1, 2016 ([Document #1](#)). The department sent out a survey to receive feedback from providers on the fiscal impact of the updated rule. Ms. Tidball-Zeltinger reviewed the preliminary results and future plans to address the changes to FLSA.

Mr. Darryl Millner, Director of Budget and Finance, Department of Human Services, provided information on the updated rule's non-enforcement period for home and community based services (HCBS) providers.

Senator Deb Peters asked if the implementation date of December 1, 2016 has been suspended pending current court decisions. Mr. Millner replied the non-enforcement timeframe has been applied only to HCBS providers.

Representative Leslie Heinemann stated the current methodology of using cost reports does not show the fiscal impact of the federal regulation until years after implementation. Ms. Tidball-Zeltinger replied the FLSA ruling is an example of how a change in federal regulation does not fit in the state's fiscal planning process.

Representative Heinemann asked if there was any federal funding to aid in this change to federal regulation. Ms. Tidball-Zeltinger replied no additional federal funds were allocated to the state to aid in the additional cost.

Senator Bruce Rampelberg asked if providers have reported the total cost they face with each of their different options. Ms. Tidball-Zeltinger replied that providers have reported only the direct cost. Providers have not reported any additional administrative cost associated with the change because they are still gathering data.

Senator Larry Tidemann asked if providers will convert salaried employees to hourly employees. Ms. Tidball-Zeltinger replied some providers have reported they will take this course of action, others will not.

Senator Scott Parsley asked if the 15 bed requirement for the non-enforcement period applied to nursing home facilities. Ms. Tidball-Zeltinger replied the non-enforcement period only applies to HCBS providers.

Representative Hunhoff stated that through the testimony presented today other providers have been mentioned in the non-enforcement period, and asked if the department has identified the other providers. Ms. Tidball-Zeltinger stated the request has been made to the Federal Department of Labor to clarify on who is covered under the non-enforcement period. The department is still waiting for a clear answer from the federal government.

Representative Hunhoff asked when will the department have the answer. Ms. Tidball-Zeltinger replied the federal government has not given the department a date.

Public Testimony

Mr. Dan Cross, Community Support Providers of South Dakota, Spearfish presented information on how the updated rule will have a direct impact on community support providers (CSPs) ([Document #2](#)).

Ms. Angie Brown, LifeScape, Sioux Falls presented information on the direct impact the updated rule will have on LifeScape, a local CSP.

Senator Parsley asked what the response has been from South Dakota's congressional delegation. Mr. Cross replied that South Dakota's congressional delegation have said this is an unfunded federal mandate.

Senator Parsley asked if the delegation will support the new federal legislation. Mr. Cross replied that conversations with the delegation occurred before the new federal legislation was introduced.

Representative Spencer Hawley asked if a provider has to report the wages of a new employee to the South Dakota Department of Labor and Regulation (DLR). Mr. Cross replied every new employee's wages are reported to the DLR. Senator Peters stated that state law requires any new employee's wages be reported to the DLR.

Senator Rampelberg asked if CSPs have additional means to cover the cost if new funding is not available. Mr. Cross replied the CSPs have to comply with the new rule even if state funding is not available. CSPs will look to local fundraising and other funding sources to cover any shortfall.

Representative Thomas Holmes asked how no increase in funding for CSPs will impact their services. Ms. Brown stated that the organization will have to make cuts in expenses, delay salary increases, cut benefits, and potentially cut the services provided to their clients.

Representative Fred Romkema asked if CSPs are declining new patients. Mr. Cross replied he did not know if any CSPs are declining new patients.

Senator Tidemann asked if the 15 bed exemption is per individual home or for the whole CSP. Mr. Cross replied the federal Department of Labor has not provided clarification.

Ms. Shelia Weber, South Dakota Association of Youth Care Providers, Sioux Falls reviewed the services provided by youth care providers through state contracts. The current model is unsustainable because of a 52% turnover rate, continued downsizing of programs, and staff cost beyond the reimbursement rate. The fiscal impact of the FLSA to providers is estimated at \$776,000. The non-enforcement period does not apply to youth care providers and the state needs to develop a forward looking "prospective" rate model.

Senator Rampelberg asked if the providers are having a difficult time finding nurses. Ms. Weber replied that nursing staff and other staff are difficult to find. The association is working actively with the Board of Nursing to assist in this problem.

Mr. Terry Dosch, South Dakota Council of Mental Health Centers and South Dakota Council of Substance Abuse Directors, Pierre, stated the FLSA effects all employers with salaried employees who were previously exempt. This will have a fiscal impact on organizations who are heavily funded through the state. The current cost report methodology does not show the fiscal impact because it only shows the current cost and not potential cost of an unfunded federal regulation.

Representative Hawley asked if cost reports could reflect the current and potential labor costs in a year. Mr. Dosch replied the existing cost report is retrospective and the department needs to change the methodology to be prospective by looking at current market rates. Market rates need to be included in the dialogue when setting reimbursement rates.

Senator Parsley stated that state law requires employers to report new employee wages to the DLR, and asked if the department worked with the DLR to get accurate wage information in order to make the process more prospective. Ms. Tidball-Zeltinger replied the department utilizes cost reports for historical data and relies on the providers for current market rates.

Senator Parsley stated the last meeting showed a 1.7% increase to get CSPs to 100% methodology, and asked if that increase would meet current fiscal demands and be prospective. Mr. Dosch stated the 1.7% would not meet the current demand of the market. Ms. Tidball-Zeltinger stated the 1.7% increase was not a prospective look at the current market rates and did not account for the fiscal impact of the FLSA.

Representative Hunhoff asked for details on how agencies set their budgets for the upcoming fiscal year. Mr. Dosch stated the boards base their budgets on the amount appropriated by the Legislature in the state budget.

Senator Tidemann asked if the wages used in cost reports were if the provider was fully staffed, or only for positions currently filled. Ms. Tidball-Zeltinger replied that both numbers are reported on the cost report.

Senator Peters asked which number is used in setting reimbursement rates. Ms. Tidball-Zeltinger replied the prospective cost to fill all positions is used when setting reimbursement rates.

Senator Peters asked how annual inflation is applied. Ms. Tidball-Zeltinger replied the inflationary increase is applied to the reimbursement rate.

Representative Hawley asked if the FLSA is an issue because the rate for base entry wages is too low and administrators are covering hours because of a shortage of employees. Mr. Dosch replied there will always be staffing challenges but, with better entry staff wages, it is easier to recruit and keep staff.

Committee Discussion

Current Reimbursement

Representative Hunhoff asked if the committee members received enough information on the current methods of reimbursement.

Senator Peters stated the committee has received information on the current methods of reimbursement and rate setting; however, there needs to be more detailed information provided regarding rate setting and how providers could be better included in the process. The current reimbursement methodology is a part of the committee's findings but continued work on the financing of the methodology is required.

Senator Parsley stated there is no confidence in the methodology and he is concerned about not looking at the whole process. The current reimbursement rate needs to be prospective when it is set.

Conclusion on Reimbursements for Current Expenses

Representative Hunhoff stated it is the consensus of the committee that the current reimbursement rate for providers do not cover their expenses.

Options for Additional Dollars for Providers

Ms. Kim Malsam-Rysdon, Secretary, Department of Health presented information regarding Medicaid expansion ([Document #3](#)).

Representative Heinemann asked if there is an incentive for providers to participate in Medicaid expansion. Secretary Malsam-Rysdon replied the incentive is that non-Indian Health Service providers will have more patients covered by insurance. There is no fiscal incentive for providers but the Governor is open to improving provider rates.

Representative Romkema asked for an explanation on the \$123 million in uncompensated care. Secretary Malsam-Rysdon replied this amount is paid by higher insurance rates, by counties, or the cost is not paid.

Representative Hunhoff stated that another option to get additional dollars for providers is a provider tax and asked Mr. Jason Simmons to provide a brief summary.

Mr. Jason Simmons, Senior Fiscal Analyst, Legislative Research Council, reviewed the information on healthcare provider taxes presented to the committee in September.

Representative Hunhoff expressed concern with a provider tax because it would be a short term funding fix. She recommended if the Legislature chose this option it would need a sunset clause and other long term options would need to be explored. The provider tax would need to be a dedicated tax where the funds could be used only for Medicaid reimbursement.

Representative Hawley asked how long is short term. Representative Hunhoff replied three to five years.

Representative Heinemann expressed concern that the provider tax will affect a large segment of the population that will not benefit from the federal match dollars. The tax would be pushed from the providers to the patients.

Representative Hunhoff stated that cost shifting is occurring now. Medicaid reimbursement is not covering the cost meaning private pay and insurance companies are billed higher rates to offset the difference in the Medicaid rate.

Senator Tidemann asked if the tax rate can vary within a provider group. Mr. Simmons replied that he did not know for sure but in his research he did not find an example of that.

Senator Peters stated that if the tax rate would vary that might affect current interstate tax agreements with neighboring states.

Representative Heinemann stated that this option should be put on hold until federal match funds increase to a higher percentage.

Representative Hunhoff stated if the federal match funds increased that would mean the per capita income would have decreased in the state.

Senator Parsley recommended the dental reimbursement rate be raised to 75% of the Delta Dental rate. Testimony has been that proper oral health can prevent other health problems. If the reimbursement rate was raised, more providers would participate in the Medicaid program.

Senator Rampelberg stated that the organizations that benefit from low Medicaid rates are not the providers but insurance companies and recommended the state look at a franchise tax on the insurance industry.

Senator Tidemann asked what the difference between the cost and the savings of Medicaid expansion would be. Secretary Malsam-Rysdon reviewed the cost and savings of Medicaid expansion for each year.

Senator Peters asked if the federal government has ever defaulted on paying their portion of Medicaid. Ms. Tidball-Zeltinger replied the federal government has never defaulted on their portion of Medicaid funding.

Options for Regulatory Changes to Reduce Cost for Providers

Senator Peters recommended the department review the rules and add tasks that are supervised by nurses but delegated to trained staff in neighboring states. This would save the state money by having these task delegated to lower cost providers. Cost reports need to be examined. It needs to be determined what the federal government requires for Medicare and what additional information the state requires for Medicaid.

Representative Heinemann stated the cost reports need to include capital cost which varies between facilities. Cost reports need to be a prospective look at what the provider can accomplish with funding not a historical review of what the provider did accomplish with limited funding and limited staff.

Committee Recommendations and Action

The committee discussed potential recommendations to report to the Legislative Executive Board on November 18, 2016.

REPRESENTATIVE HAWLEY MOVED, SECONDED BY SENATOR PETERS THE COMMITTEE SUBMIT A RECOMMENDATION TO THE EXECUTIVE BOARD:

FOR THE 2017 LEGISLATIVE SESSION, THE JOINT COMMITTEE ON APPROPRIATIONS SHOULD:

- 1. IDENTIFY DOLLARS NEEDED TO SUSTAIN PROVIDERS IN CONTINUING TO PROVIDE SERVICES,**
- 2. FIND POTENTIAL FUNDING FOR SUSTAINABILITY OF PROGRAMS,**
- 3. REALIGN EXPENDITURES TO MEET THE SHORT TERM AND LONG TERM NEEDS OF OUR MEDICAID POPULATION.**

The motion prevailed unanimously on a voice vote.

SENATOR TIDEMANN MOVED, SECONDED BY SENATOR PARSLEY THE COMMITTEE SUBMIT A RECOMMENDATION TO THE EXECUTIVE BOARD:

WHEN THE DEPARTMENTS SET REIMBURSEMENT RATES FOR MEDICAID, THE DEPARTMENTS UTILIZES 2015 COST REPORTS AND FACTOR IN THE UPDATED RULE FROM THE FAIR LABOR STANDARDS ACT.

The motion prevailed unanimously on a voice vote.

Adjournment

SENATOR PETERS MOVED, SECONDED BY REPRESENTATIVE HOLMES, TO ADJOURN. The motion prevailed unanimously on a voice vote.

The committee adjourned at 2:12 p.m. (CDT)